

NO. D-1-GN-18-007133

KEN PAXTON, in his official capacity as	§	IN THE DISTRICT COURT OF
ATTORNEY GENERAL OF TEXAS,	§	
Plaintiff,	§	
	§	
v.	§	
	§	
WILLIAM MCMANUS, in his official	§	TRAVIS COUNTY, TEXAS
capacity as Chief of San Antonio Police	§	
Department; SAN ANTONIO POLICE	§	
DEPARTMENT; CITY OF SAN	§	
ANTONIO; and SHERYL SCULLEY, in her	§	
official capacity as City Manager of City of	§	
San Antonio,	§	
Defendants.	§	345TH JUDICIAL DISTRICT

DEFENDANTS' ORIGINAL ANSWER

TO THE HONORABLE COURT:

Defendants William McManus ("Chief McManus"), the San Antonio Police Department ("SAPD"), the City of San Antonio, and Sheryl Sculley ("City Manager Sculley") (collectively "Defendants") file this Original Answer to the Original Petition filed by Ken Paxton, in his official capacity as Attorney General of Texas ("Plaintiff").

1. Plaintiff filed this lawsuit to make a political statement. Plaintiff's allegations have no basis in law or in fact. Defendants' actions and policies have at all times been consistent with both state and federal laws.

2. Plaintiff's claims are based on alleged violations of Texas Government Code, Title 7, Chapter 752, Subchapter C, Section 752.053, better known as Senate Bill 4 ("SB4"). Nothing in SB4 changes federal immigration law or the jurisdiction of local police departments.

3. It is not a crime for an undocumented person to be present in the United States. *See Arizona v. U.S.*, 567 U.S. 387, 407 (2012). That was true before the passage of SB4 and remains true today. Given the pervasive, misleading commentary on immigration issues in Texas and across

the nation, this fact may be lost. But the law remains clear— if an undocumented person is merely present in Texas, that individual is not committing a criminal offense. *See id.* Furthermore, the removal of an undocumented person by federal immigration authorities is a civil matter, not a criminal one. *Id.*

4. Congress has specified which undocumented persons may be removed from the United States and the procedures for doing so. Decisions about whether to remove an undocumented person from the United States are made at the discretion of the Federal Government. Local police departments like SAPD may not detain individuals simply because they may be removable. *See id.* at 387. SAPD is charged with enforcing criminal laws, not immigration laws. SAPD can only arrest an individual if there is probable cause to believe that person committed a crime. SB4 did not change this well-settled principle.

5. SB4 does not require local police departments like SAPD to enforce immigration laws. Instead, SB4 simply prohibits SAPD and other local entities from adopting or enforcing policies that prohibit or materially limit the enforcement of federal immigration laws. In other words, SB4 does not charge local entities with action; instead, it prohibits them from impeding the actions of federal immigration authorities. Defendants are not violating, and have never violated, SB4.

6. SAPD cooperated with federal immigration authorities before the passage of SB4 and continues to cooperate with them today. SAPD provides federal immigration authorities with daily access to its detention facility and regularly complies with legal detainer requests. San Antonio is not a “sanctuary city,” as Plaintiff uses that term, but SAPD has no legal authority to hold individuals unless they are detained or arrested for matters within the jurisdiction of local law enforcement.

7. The Attorney General of Texas brings this lawsuit in pursuit of a political agenda. There is no basis in law or fact for any of his claims. Defendants deny each and every allegation against them and further answer as follows:

I. FACTUAL BACKGROUND

A. SAPD General Manual and Immigration Policy

8. SAPD publishes a General Manual to convey standard operating procedures of the department. It is issued under the authority of the Chief of Police and has the effect of an order. Procedure 618 of the SAPD General Manual (“Procedure 618”) is entitled “Racial/Bias Profiling/Immigration Policy.” Procedure 618 was specifically drafted to be consistent with U.S. Supreme Court rulings and Texas law, including SB4.

9. Procedure 618 initially sets out two core policies: 1) to provide equal protection to all citizens by prohibiting racial/bias profiling in any aspect of law enforcement-initiated actions; and 2) to prohibit officers from using race, national origin, citizenship, religion, ethnicity, age, gender, sexual orientation, or physical or mental disability for a law enforcement-initiated action, except to determine whether a person matches a specific description of a particular suspect. SAPD General Manual § 618.02(A) and (B). In furtherance of these policies, Procedure 618.11 sets forth SAPD’s “Immigration Policy.” Specifically, Procedure 618.11 states that officers will not refer persons to ICE unless the person has a federal deportation warrant, and that national origin, immigration status, ethnicity and race are not a basis for an arrest. *Id.* § 618.11(A). Officers will verify identification and perform a background check on people with whom they are issuing a citation, legally detaining, arresting, or processing for magistration. *Id.* §§ 618.11(A)(3) and (B). Further, Procedure 618.11 states that officers will not detain and/or arrest an individual based on the

fact or suspicion that they are in the United States illegally. *Id.* § 618.11(C). To that end, immigration status alone is not probable cause for an arrest. *Id.* § 618.11(C)(3).

10. SAPD's immigration policy, as outlined in Procedure 618.11, is rooted in public policy considerations, Texas law, and federal court opinions. Police departments work best when they have the trust and cooperation of their communities. When members of the community fear that they or their loved ones may be turned over to immigration officials, they may avoid contact with the police. This fear and distrust makes investigating, solving, and preventing crimes more difficult for SAPD and police departments throughout Texas.

B. December 23, 2017 Incident

11. At approximately noon on December 23, 2017, SAPD was called to the scene of a suspicious tractor-trailer carrying 12 individuals. SAPD sent an officer to the scene and also contacted the Homeland Security Law Enforcement Hotline to notify the Department of Homeland Security of the incident. SAPD was advised that an officer from Immigration and Customs Enforcement ("ICE") Homeland Security Investigations ("HSI") would be sent to the scene. Chief McManus responded to the scene, along with multiple SAPD officers from several different units. Early in its investigation, SAPD learned that the tractor-trailer started its journey in Laredo, Texas and did not cross the Mexico border. That information, along with additional facts gathered at the scene and during police interviews of the driver, passenger, and 12 witnesses in the trailer, informed SAPD's conclusion it was dealing with an intrastate human smuggling case, rather than a human trafficking case.

12. Although often used interchangeably, the terms "human trafficking" and "human smuggling" are not synonymous. Human trafficking is defined as the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force,

fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. <https://www.sanantonio.gov/SAPD/Human-Trafficking>; *see also* Texas Penal Code, Title 5, § 20A—Trafficking of Persons. Human smuggling is defined as the importation of people into the United States involving the deliberate evasion of immigration laws. <https://www.sanantonio.gov/SAPD/Human-Trafficking>; *see also* Texas Penal Code, Title 5, § 20.05—Smuggling of Persons. The term “human smuggling” includes both bringing undocumented persons into the United States as well as the unlawful transportation and harboring of undocumented persons who are already in the United States. *Id.* In short, human trafficking is exploitation-based, whereas human smuggling is transportation-based.

13. Several hours passed, and HSI still had not arrived at the scene. Based on the initial investigation and the delayed response of HSI, Chief McManus made the decision to process the case under the state smuggling statute, Texas Penal Code, Chapter 20, § 20.05. Plaintiff characterizes Chief McManus’s decision to process the case under the state smuggling statute as “a departure from customary procedure” and “an unprecedented decision.” Orig. Pet. at ¶¶ 54, 63. Plaintiff further implies that Chief McManus made this decision to avoid the involvement of federal immigration authorities. These allegations are false. Chief McManus decided to employ the state statute to enable SAPD to take control of the scene, due in part to the delayed response of federal immigration authorities.

14. HSI Special Agent Johnson arrived at the scene hours after SAPD and HSI were notified of the incident. He arrived by himself with no additional resources from HSI. Chief McManus informed him that SAPD was handling the incident under the state smuggling statute. Special Agent Johnson did not express any disagreement with that position. Instead, he asked Chief McManus if he could assist. Chief McManus said yes, and suggested that Special Agent

Johnson cover the Homeland Security logo before interacting with the witnesses. That was the first and only conversation between Chief McManus and Special Agent Johnson.

15. Upon their return to SAPD headquarters, SAPD officers conducted thorough interviews of the driver, passenger, and all 12 witnesses. Contrary to Plaintiff's allegations, SAPD had an ample number of Spanish-speaking officers to conduct all the witness interviews. *See* Orig. Pet. at § 66. Special Agent Johnson observed the interviews. Following the interviews, the witnesses left SAPD headquarters. Because they were not criminal suspects, SAPD had no authority to detain any of the 12 witnesses. HSI was aware of the witnesses' location at all times and could have taken any or all of the witnesses into custody. SAPD and Chief McManus deny that they did not allow ICE Enforcement and Removal Operations to pick up or process the witnesses, as alleged in paragraph 75 of the Original Petition.

16. Unlike the 12 witnesses, the driver of the tractor-trailer was suspected of committing a crime, and he was taken into custody. Plaintiff's allegation that no criminal case has been filed against any individual arising out of the December 23, 2017 incident is false. *See* Orig. Pet. at ¶¶ 9-10. Plaintiff's allegation that "SAPD released the alleged smuggler without charging him with a crime" is also false. *See* Orig. Pet. at ¶ 79. SAPD filed a Charge and Disposition Report against the driver with the Bexar County District Attorney's Office for human smuggling. SAPD is committed to working with that office to prosecute this individual.

C. Communications Protocol for Human Smuggling or Trafficking Incidents

17. Following the December 23, 2017 incident, Chief McManus and HSI Special Agent in Charge Shane Folden committed to ongoing discussions aimed at developing a protocol for coordination in the context of human trafficking or human smuggling incidents. Those discussions resulted in the SAPD Communication Protocol Human Smuggling or Trafficking Incident

(“Communication Protocol”), which establishes the protocol if SAPD determines undocumented persons are potential witnesses to an offense of human smuggling or trafficking. The Communications Protocol requires, *inter alia*, that SAPD notify HSI of the incident. The Communications Protocol also states that “[u]nless HSI investigators clearly state they will lead the investigation, SAPD personnel will conduct the investigation under SAPD procedures.” In addition, the Communications Protocol requires SAPD to notify the Office of the Chief and the City of San Antonio’s Immigration Liaison. The Office of the Chief will also notify two social services agencies—Catholic Charities and RAICES.

18. Contrary to Plaintiff’s allegations, the Communications Protocol does not provide for “immigration counsel to represent the suspected aliens at the scene.” *See* Orig. Pet. at ¶ 101. Instead, the Communications Protocol states these agencies can provide “necessary translation services” and “can also assist in providing aid and comfort to undocumented persons who are not arrested.” This protocol allows for humanitarian assistance for persons in need, often dire need. This protocol does not prohibit or materially limit the enforcement of immigration laws as alleged by Plaintiff. *See id.* Plaintiff’s allegation that providing aid and comfort to undocumented witnesses of human trafficking or smuggling violates state law is not only preposterous, but reprehensible.

II. DEFENDANTS DID NOT VIOLATE SB4 ON DECEMBER 23, 2017

19. Plaintiff’s Original Petition alleges that Defendants violated two provisions of SB4 on December 23, 2017—Sections 752.053(a)(1) and 752.053(b)(3). Plaintiff’s claims lack merit for a variety of legal and factual reasons including, but not limited, to the following:

A. Defendants Did Not Violate Section 752.053(a)(1)

20. In his first cause of action, Plaintiff alleges that Chief McManus and SAPD violated SB4's provision prohibiting a local entity from adopting or enforcing a "policy" that "prohibits or materially limits the enforcement of immigration laws." Tex. Gov't Code § 752.053(a)(1) ("§ 752.053(a)(1)"). This cause of action is based entirely on the incident that took place in San Antonio on December 23, 2017. Chief McManus and SAPD deny this allegation in its entirety.

21. As an initial matter, Plaintiff does not plead any facts to suggest that the actions taken by SAPD or Chief McManus on December 23, 2017 constitute a "policy," as required for a violation of § 752.053(a)(1). To the contrary, Plaintiff repeatedly alleges that the actions of Chief McManus and SAPD on December 23, 2017 were "a departure from customary practice" and "unprecedented." Orig. Pet. at ¶¶ 6, 54, 64. On their face, these allegations contradict Plaintiff's claim that SAPD and McManus adopted or enforced a "policy" on December 23, 2017 to prohibit or materially limit the enforcement of immigration laws, as required for a violation of § 752.053(a)(1); *see also* Tex. Gov't Code § 752.051(6) (defining "policy" to include "a formal, written rule, order, ordinance, or policy and an informal, unwritten policy").

22. Setting aside SB4's "policy" requirement, the conduct alleged by Plaintiff does not amount to prohibiting or materially limiting the enforcement of immigration laws. Plaintiff alleges that SAPD violated SB4 by failing to turn over the witnesses in the back of the tractor-trailer "after repeated requests from [ICE or HSI] to take the suspected aliens into custody." Orig. Pet. at ¶¶ 92, 93. These allegations are also false. Neither Chief McManus nor SAPD prohibited or materially limited HSI or ICE from enforcing immigration laws. Plaintiff admits that SAPD notified HSI, which deployed Special Agent Brian Johnson to the scene of the tractor-

trailer incident on December 23, 2017. *See* Orig. Pet. at ¶ 5. Plaintiff further admits that Special Agent Johnson drove to the scene, maintained contact with SAPD, and even watched and listened to the interviews with the driver of the tractor-trailer and the 12 witnesses. *Id.* at ¶¶ 48, 51, 67. The federal immigration agencies were aware of the location of the 12 witnesses at all times and even observed the SAPD interviews with them. SAPD did not prohibit or materially limit HSI or ICE from taking the witnesses into custody if they chose to do so. HSI or ICE chose not to take the witnesses into custody.

B. Defendants Did Not Violate Section 752.053(b)(3)

23. In his second cause of action against SAPD and Chief McManus, Plaintiff alleges violation of SB4’s provision prohibiting a local entity from prohibiting or materially limiting employees from “assisting or cooperating with a federal immigration officer. . . .” Tex. Gov’t Code § 752.053(b)(3) (“§ 752.053(b)(3)”). Specifically, Plaintiff alleges that SAPD and Chief McManus prohibited and materially limited SAPD officers from assisting or cooperating with ICE, HSI, and Special Agent Johnson in the enforcement of federal immigration laws. Orig. Pet. at ¶¶ 95-96. These allegations are false.

24. The factual recitations in Plaintiff’s own pleading belie Plaintiff’s claims and demonstrate SAPD’s coordination with HSI on December 23, 2017. *See* Orig. Pet. at ¶ 5 (“SAPD also notified U.S. Immigration and Customs Enforcement (‘ICE’) Homeland Security Investigations (‘HSI’), which deployed Special Agent Brian Johnson to the scene.”); *Id.* at ¶ 43 (“Eventually, an SAPD officer contacted Homeland Security Investigations (‘HSI’), a division of ICE, to inform them about the suspected aliens.”); *Id.* at ¶ 48 (“At approximately 1:30 p.m., ICE Enforcement and Removal Operations (‘ERO’) contacted HSI Special Agent Brian Johnson, who was on call, and asked him to respond to the scene.”); *Id.* at ¶ 51 (“While Special Agent Johnson

drove to the scene, he maintained contact with SAPD. . .”); *Id.* at ¶ 67 (“Special Agent Johnson went to the monitor room where he could watch and listen to the interviews.”). These and other facts demonstrate that SAPD assisted and cooperated with immigration officials by alerting HSI to the incident, asking HSI to respond to the scene, and allowing Special Agent Johnson to watch and listen to interviews with witnesses.

C. An Injunction Renders Groundless Several of Plaintiff’s Claims

25. On August 30, 2017, Chief Judge Orlando Garcia of the Western District of Texas enjoined the State of Texas and Plaintiff (among others) from “implementing and enforcing” certain provisions in SB4. *See City of El Cenizo v. State*, 264 F. Supp. 3d 744, 812-13 (W.D. Tex. 2017). The “endorse” provision of § 752.053(a)(1) and the “materially limits” provisions of § 752.053(a)(1) and § 752.053(b)(3) were among the provisions enjoined. *See id.* On September 25, 2017, the Fifth Circuit stayed portions of the injunction. *City of El Cenizo, Tex. v. Texas*, No. 17-50762, 2017 WL 4250186, at *2 (5th Cir. Sept. 25, 2017). But the Fifth Circuit left in place those portions of the injunction relating to the “endorse” provision of § 752.053(a)(1) and the “materially limits” provisions of § 752.053(a)(1) and § 752.053(b)(3). *See id.* On March 13, 2018, the Fifth Circuit issued an opinion affirming the injunction for the “endorse” provision of § 752.053(a)(1) and vacating the injunction for the “materially limits” provisions of § 752.053(a)(1) and § 752.053(b)(3). *See City of El Cenizo, Tex. v. Texas*, 885 F.3d 332 (5th Cir. 2018). In his Original Petition, Plaintiff acknowledges only the Fifth Circuit’s final opinion. *See* Orig. Pet. at p. 7, n.5. In doing so, Plaintiff mischaracterized the opinion as “upholding all portions of the law relevant to this lawsuit[.]” *id.*, and completely disregards the injunction that was in effect during periods relevant to this lawsuit.

26. At the time of the December 23, 2017 incident at issue in Plaintiff's first and second causes of action, the "materially limits" provisions of § 752.053(a)(1) and § 752.053(b)(3) were enjoined from implementation and could not be enforced. Thus, Plaintiff's claims that SAPD and Chief McManus violated these provisions on December 23, 2017 are without merit. *See* Orig. Pet. at ¶¶ 91, 93, 95, 97, 99-101, 110-114. Likewise, because the injunction relating to the "materially limits" provisions of § 752.053(a)(1) remained in effect until March 13, 2018, Plaintiff's third cause of action is without merit to the extent it hinges on SAPD's Procedure 618.11 materially limiting the enforcement of immigration laws between September 1, 2017 and March 12, 2018. Finally, because the "endorse" provision of § 752.053(a)(1) has been enjoined from implementation and enforcement since August 30, 2017—i.e., it has not been implemented to this day—Plaintiff's third cause of action, including the associated request for penalties, is without merit to the extent it hinges on Defendants' alleged endorsement of Procedure 618.11.

27. In sum, Plaintiff's causes of action based on the "endorse" provision of § 752.053(a)(1) are wholly groundless because an injunction precludes the implementation and enforcement of that provision. In addition, Plaintiff's causes of action based on the "materially limits" provisions of § 752.053(a)(1) and § 752.053(b)(3) are partially groundless because an injunction precluded their implementation and enforcement between August 30, 2017 and March 12, 2018.

III. DEFENDANTS' POLICIES DO NOT VIOLATE SB4

28. As indicated above, Plaintiff's third cause of action rests in part on allegations that Defendants violated SB4's provision barring a local entity from adopting or enforcing a policy that "prohibits or materially limits the enforcement of immigration laws." § 752.053(a)(1). This

cause of action is not based on the December 23, 2017 incident, but rather centers on SAPD policies that allegedly violate SB4. Defendants deny this allegation in its entirety.

A. SAPD General Manual Procedure 618.11 Does Not Violate Section 752.053(a)

29. Plaintiff's first allegations in the third cause of action relate to the SAPD General Manual. Plaintiff alleges that Section 618.11 of the SAPD General Manual is a "de facto policy of prohibiting or materially limiting SAPD officers from *complying with federal immigration laws*." Orig. Pet. at ¶ 100 (emphasis added). This allegation evidences Plaintiff's misinterpretation of SB4 and pertinent federal law. Neither SB4 nor pertinent federal law requires SAPD (or any other local entity) to take any affirmative action to "comply" with federal immigration laws. In contrast, Congress has made clear that federal immigration officials—not local law enforcement entities—are charged with complying with and enforcing federal immigration laws. SB4 simply prohibits local entities like SAPD from standing in the way of federal immigration officials.

30. Nothing in Procedure 618 prohibits or materially limits the enforcement of immigration laws by federal immigration officers. Each day, federal immigration authorities visit the SAPD Central Magistrate Office, which processes arrests in Bexar County. The federal immigration authorities are permitted to enter the facility and visit any individual in custody. SAPD honors all federal deportation warrants and detainer requests from federal immigration authorities.

B. The Relationship with Catholic Charities Does Not Violate SB4

31. Plaintiff's third cause of action also alleges that Defendants' policy of contacting Catholic Charities when they encounter human trafficking or human smuggling prohibits or materially limits the enforcement of immigration laws. *See* Orig. Pet. at ¶ 101. Plaintiff alleges that Defendants are prohibiting or materially limiting enforcement of immigration laws by

contacting this social service agency. However, as discussed above, the Communications Protocol developed by SAPD and HSI provides that Catholic Charities and RAICES can provide necessary translation services, aid, and comfort to undocumented persons who are potential witnesses to human smuggling or human trafficking. Plaintiff offers no basis for its allegation that provision of humanitarian services to undocumented witnesses violates state law. Indeed, there is no plausible basis for Plaintiff's claims in this regard.

32. Plaintiff also alleges that Defendants are violating SB4 by facilitating access to legal advice. He alleges that Defendants have a "policy" of "contacting immigration counsel to represent suspected aliens" at the scene of human smuggling or trafficking incidence. *See* Orig. Pet. at ¶ 101. Plaintiff further alleges that the Communications Protocol requires Chief McManus to contact Catholic Charities "and the immigration law firm" of any smuggling or trafficking incident, "so that these agencies can provide . . . legal services to suspected felons (suspected illegal aliens)." *See* Orig. Pet. at ¶ 89. This allegation alone demonstrates this lawsuit is not founded on legal principles, but rather on a political agenda.

33. Not only is the Communications Protocol limited to dealing with undocumented persons who are witnesses to crime (not criminals themselves), but there is no provision for legal services at all. Plaintiff's allegation is not only false; it is spun out of thin air for the sole purpose of pursuing a political agenda.

C. Defendants Have Not Ignored Human Smuggling Incidents

34. In the final argument in support of his third cause of action, Plaintiff alleges that Defendants have demonstrated a "pattern and practice" of ignoring potential human smuggling incidents. *See* Orig. Pet. at ¶ 102. Plaintiff offers no support for this baseless allegation, and Defendants deny this allegation in its entirety. Defendants take human smuggling very seriously

and SAPD thoroughly investigates each and every incident of human smuggling that comes to SAPD's attention. Indeed, SAPD referred the individual responsible for the December 23, 2017 incident for criminal charges. *See* ¶12 *supra*.

IV. PLAINTIFF'S REQUESTS FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES ARE UNSUPPORTABLE

A. Injunctive Relief is Not Appropriate because Defendants Do Not Violate SB4

35. Plaintiff seeks to enjoin Chief McManus and City Manager Sculley from future violations of SB4 and from enforcing Procedure 618.11. Plaintiff titles this section of the Original Petition "Injunctive Relief," despite the fact he references § 752.055(b) of SB4, which provides only for "appropriate equitable relief"—and only if a local entity violates SB4. Chief McManus and City Manager Sculley have not violated any provision of SB4, so equitable relief is not appropriate. However, even if § 752.055(b) does apply, Plaintiff's request for injunctive relief is inappropriate.

36. To obtain injunctive relief, a party must demonstrate: (1) a wrongful act; (2) imminent harm; (3) irreparable injury; and (4) no adequate remedy at law. *Long Canyon Phase II & III Homeowners Ass'n, Inc. v. Cashion*, 517 S.W.3d 212, 224 (Tex. App.—Austin 2017, no pet.). In this case, the Texas Legislature has provided for specific civil penalties for violations of SB4; thus, Plaintiff is unable to demonstrate that an adequate remedy at law is not available. Additionally, Plaintiff does not plead any facts to support its allegations of unspecified "future violations," and Plaintiff's request to enjoin "future violations" does not satisfy the other legal requirements for injunctive relief.

B. Civil Penalties are Inappropriate

37. Plaintiff's Original Petition ignores that civil penalties are appropriate only when local entities are found to have "*intentionally violated*" § 752.053. Tex. Gov't Code § 752.056

(emphasis added). Not only have Defendants not violated any provisions of SB4, Plaintiff has not pled any allegations that Defendants intentionally violated any portion of SB4. Thus, civil penalties are not warranted in this matter.

V. GENERAL DENIAL

38. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendants generally deny each and every, all and singular, the allegations in Plaintiff's Original Petition and demand strict proof thereof. Defendants reserve the right to plead further as the case progresses and intend to supplement or amend this answer as new information is discovered or otherwise becomes available.

VI. AFFIRMATIVE DEFENSES AND OTHER DEFENSES

39. In addition to the multiple defenses raised above, Defendants further offer the following defenses to Plaintiff's Original Petition:

40. As alleged and applied by Plaintiff, Texas Government Code § 752.053(a)(1) and § 752.053(b)(3) are invalid and unenforceable under the Fourth Amendment of the United States Constitution.

41. As alleged and applied by Plaintiff, Texas Government Code § 752.053(a)(1) and § 752.053(b)(3) are impermissibly vague and therefore unlawful and unenforceable under the Fourteenth Amendment of the United States Constitution.

42. Plaintiff has not alleged any conduct constituting a violation of SB4, Texas Government Code §§ 752.051-.057. The applicable provisions of SB4 require a predicate request for federal assistance. Plaintiff does not allege a sufficient predicate request for federal assistance was made. Plaintiff also has not alleged any conduct warranting imposition of civil penalties or

any other civil remedies under Texas law, including the common law and the aforementioned statutory provisions upon which Plaintiff relies in his Original Petition.

43. As alleged and applied by Plaintiff, Texas Government Code § 752.053(a)(1) and §752.053(b)(3) are invalid and unenforceable under the Supremacy Clause of the United States Constitution.

44. Defendants are immune, in whole or in part, from liability under those provisions of SB4 that were subject to federal injunction on December 23, 2017.

45. SAPD is not a separate legal entity capable of being sued and therefore is not a proper defendant to this action. *See, e.g., Darby v. Pasadena Police Dept.*, 939 F.2d 311, 313 (5th Cir. 1991). Chief McManus and City Manager Sculley are also improper defendants to this action because Plaintiff's requests for injunctive relief are legally improper and groundless.

VII. REQUESTS FOR DISCLOSURE

46. Pursuant to Rule 94 of the Texas Rules of Civil Procedure, Plaintiff is requested to disclose, within 30 days of service of this request, the information and material described in Rule 194.2.

VIII. CONCLUSION

47. Plaintiff's allegations ignore the law: SAPD cannot detain a person simply because that person is undocumented. Plaintiff's allegations ignore the facts: SAPD contacted the Department of Homeland Security as soon as it learned of the December 23, 2017 incident, and HSI or ICE made the decision not to take the 12 witnesses into custody.

48. Regrettably, the Attorney General does not let the law or facts get in the way of making a political statement.

IX. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants pray that the Court deny all relief requested by Plaintiff and grant Defendants such other and further relief, both at law and in equity, to which they may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on January 7, 2019 as indicated below through the Court's electronic filing system and via email.

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Steve McConnico

CAUSE NO. D-1-GN-18-007133

KEN PAXTON, in his official capacity	§	IN THE DISTRICT COURT OF
as ATTORNEY GENERAL OF TEXAS,	§	
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<i>Plaintiff,</i>	§	
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WILLIAM MCMANUS, in his official	§	
capacity as Chief of San Antonio Police	§	TRAVIS COUNTY, TEXAS
Department; CITY OF SAN ANTONIO;	§	
and SHERYL SCULLEY, in her official	§	
capacity as City Manager of City of San	§	
Antonio,	§	
	§	
<i>Defendants.</i>	§	345th JUDICIAL DISTRICT

PLAINTIFF'S FIRST AMENDED PETITION

TO THE HONORABLE JUDGE:

Plaintiff Ken Paxton, Attorney General of Texas, files this First Amended Petition for writ of injunction, civil penalties, and fees against William McManus, in his official capacity as Chief of the San Antonio Police Department; the City of San Antonio ("City"); and Sheryl Sculley, in her official capacity as City Manager of City of San Antonio, for violations of Senate Bill 4. In support of this Petition, Plaintiff hereby states as follows:

I. INTRODUCTION

1. Since at least 2015, the issue of "sanctuary cities" refusing to cooperate with federal immigration authorities has been a matter of widespread public concern. In response, state and federal policymakers took various actions. Congress held

hearings questioning these policies,¹ President Obama threatened the withdrawal of Justice Assistance Grants from local law enforcement that created sanctuary cities,² and President Trump declared sanctuary cities “have caused immeasurable harm to the American people and to the very fabric of our Republic.”³

2. Texas was not immune to the problem of sanctuary cities. For example, the Travis County Sheriff’s Office enforced a policy imposing its own selection criteria to the crimes of detention the Sheriff deemed serious enough to require officers to comply with ICE detainer requests.

3. The Texas Legislature responded to the national and local debate by enacting Senate Bill 4 (“SB 4”) to prohibit sanctuary city policies and practices throughout Texas. Act of May 3, 2017, 85th Leg., R.S., ch. 4, § 1.01, 2017 Tex. Gen. Laws 7 (codified at Tex. Gov’t Code §§ 752.051-.057). Among other things, SB 4 prohibits local entities, including local police departments, from adopting, enforcing, or endorsing policies, patterns, or practices that prohibit or materially limit the enforcement of immigration laws. Tex. Gov’t Code § 752.053(a)(1–2). SB 4 also prohibits local law enforcement from prohibiting or materially limiting one of its officers from assisting or cooperating with a federal immigration officer as reasonable or necessary, including providing enforcement assistance. *Id.* § 752.053(b)(3).

¹ *Sanctuary Cities: A Threat to Public Safety: Hearing Before the Subcomm. on Immigration and Border Sec. of the H. Comm. on the Judiciary*, 114th Cong., 1st Sess. (2015), <https://perma.cc/847D-5E4U>.

² U.S. Dep’t of Justice, Office of Justice Programs Guidance Regarding Compliance with 8 U.S.C. § 1373, at 2 (July 7, 2016), <https://perma.cc/9ST2-GG4W>.

³ Exec. Order No. 13,768, 82 Fed. Reg. 8,799, 8,799 (Jan. 30, 2017).

4. Almost four months after SB 4 took effect, the City and Chief McManus violated the mandate of SB 4 by prohibiting and materially limiting the enforcement of immigration laws and cooperation with federal immigration officials.

5. On December 23, 2017, SAPD received a call reporting a tractor-trailer filled with twelve suspected aliens who appeared to be part of a smuggling operation. San Antonio Police Department (“SAPD”) officers, including Chief McManus, reported to the scene to investigate. SAPD also notified U.S. Immigration and Customs Enforcement (“ICE”) Homeland Security Investigations (“HSI”), which deployed Special Agent Brian Johnson to the scene.

6. After the initial stop, in a departure from customary practice, Chief McManus asserted jurisdiction over the investigation under the state smuggling statute, advised officers at the scene that SAPD would be handling the case locally, and stated that HSI agents were not to be involved in the case. Additionally, McManus personally called an immigration attorney from an advocacy organization that provides immigration legal services to the scene during an active investigation, transported the suspected aliens to SAPD headquarters, ordered the release of all of the suspected aliens without so much as a routine background check, and prohibited HSI from enforcing immigration laws.

7. At the scene, the immigration attorney introduced McManus to the immigrants and assured them in McManus’s presence that McManus “does not work with immigration.”⁴

⁴ “Su oficina no trabaja con migración.”

8. And prior to releasing the suspected aliens, neither McManus nor SAPD ran the suspected aliens' criminal history through criminal databases such as the National Crime Information Center ("NCIC") to determine whether they had any criminal history or outstanding warrants. Neither McManus nor SAPD asked or allowed HSI to run the suspected aliens' names through the ICE database to determine whether they were lawfully present in the United States or had any pending deportation warrants. Neither McManus nor SAPD contacted Texas Child Protective Services to investigate the safety of a 16-year-old minor who was among those found in the trailer. And despite repeated requests, McManus refused to allow HSI Special Agent Johnson to speak to, investigate, or transport the suspected aliens to HSI for processing.

9. Upon information and belief, today there is no criminal case filed against the individual who transported the suspected aliens as part of a smuggling operation despite his confession, nor is there verified contact information for any of the suspected aliens.

10. By a series of orchestrated and intentional actions, McManus and the City enforced a policy of prohibiting and materially limiting HSI from enforcing federal immigration laws and prohibited and materially limited their officers from cooperating with ICE to enforce federal immigration laws. As a result, the suspected aliens were released, and upon information and belief, no state or federal case has been filed against a single individual arising out of the December 23, 2017 incident.

11. Furthermore, Defendants maintain policies that prohibit and materially limit enforcement of immigration laws by prohibiting officers from referring individuals to ICE, requiring officers to contact immigration attorneys on behalf of suspected aliens, and by transferring suspected aliens to third-party organizations instead of federal authorities.

12. In response to Defendants' failures to comply with SB 4, Ken Paxton, in his official capacity as Attorney General of Texas, files this petition for writ of injunction, civil penalties, attorney's fees, and costs. Tex. Gov't Code §§ 752.053, .055(b).

II. DISCOVERY CONTROL PLAN

13. Plaintiff intends to conduct discovery in this case under Level 3 of Texas Rule of Civil Procedure 190.4 and affirmatively pleads that this case is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because the relief sought includes non-monetary injunctive relief, and the claims for monetary relief—including penalties—exceeds \$100,000.

III. JURISDICTION AND VENUE

14. The Court has jurisdiction to issue a writ of mandamus and/or injunction to require McManus's and Sculley's compliance with section 752.053 of the Texas Government Code. Tex. Gov't Code §§ 24.011, 752.053, .055.

15. The Court has jurisdiction to assess civil penalties, costs, and fees against Defendants pursuant to sections 752.056 and 402.006 of the Government Code. *Id.* §§ 402.006(c),(e), 752.056.

16. Venue is proper in Travis County pursuant to section 752.055 of the Government Code because an action to enforce SB 4 may be brought in a district court in Travis County. *Id.* § 752.055(b).

IV. PARTIES

17. Plaintiff Ken Paxton is the Attorney General of Texas. Section 752.055 of the Government Code charges him with enforcement of SB 4. Tex. Gov't Code § 752.055.

18. Defendant William McManus is the Chief of the San Antonio Police Department and is the director of that department for the City of San Antonio. San Antonio, Tex., Charter art. 5, § 57.

19. Defendant City of San Antonio is a body politic and a home rule municipality in Bexar County, Texas. SAPD is one of the City's departments. San Antonio, Tex., Charter art. 5, § 50. SAPD officers possess all the powers and authority given to them as peace officers under the laws of Texas and the City's Charter. *Id.* § 58. The City is responsible for the policies, practices, and procedures of SAPD. *Id.* § 50. The City has the power to sue and be sued. San Antonio, Tex., Charter art. 1, § 3.

20. Defendant Sheryl Sculley is the City Manager for the City of San Antonio and is responsible for enforcing all laws and ordinances and exercising administrative supervision and control over all departments, including SAPD. *Id.* §§ 46, 51.

21. Defendants McManus, the City, and Sculley are local entities that are subject to mandamus, injunctive relief, civil penalties, and fees for a violation of section 752.053 of the Government Code. Tex. Gov't Code §§ 402.006, 752.051(5), .055, .056.

22. All Defendants were served with civil process and entered an appearance through counsel on January 7, 2019.

V. SENATE BILL 4

23. The Texas Legislature enacted Senate Bill 4 during the 2017 regular session. It went into effect September 1, 2017.⁵ Act of May 3, 2017, 85th Leg., R.S., ch. 4, § 1.01, 2017 Tex. Gen. Laws 7.

24. SB 4 applies to “local entities,” which it defines, in relevant part, as “the governing body of a municipality” and “an officer or employee of or a division, department, or other body that is part of a municipality, county, or special district or authority, including a sheriff, municipal police department, municipal attorney, or county attorney” Tex. Gov't Code § 752.051(5).

25. Among other things, SB 4 prohibits local entities, like McManus, SAPD, the City, and Sculley, from adopting or enforcing policies, patterns, or practices that prohibit or materially limit the enforcement of immigration laws. *Id.* § 752.053(a)(1–2). This section also prohibits local entities, like McManus, SAPD, the City, and Sculley, from prohibiting or materially limiting a police officer from assisting or

⁵ Federal litigation over SB 4 resulted in the Fifth Circuit upholding all portions of the law relevant to this lawsuit, *City of El Cenizo v. Texas*, 890 F.3d 164 (5th Cir. 2018).

cooperating with a federal immigration officer as reasonable or necessary, including providing enforcement assistance. *Id.* § 752.053(b)(3).

26. Any citizen residing in the jurisdiction of a local entity may file a complaint with the Attorney General asserting a violation of section 752.053. *Id.* § 752.055(a).

27. If the Attorney General determines the complaint is valid, he may file a petition seeking appropriate equitable relief to compel compliance with section 752.053. *Id.* § 752.055(b).

28. The Attorney General may also seek civil penalties of \$1,000 to \$1,500 for the first violation of section 752.053, and \$25,000 to \$25,500 for each subsequent violation of section 752.053. *Id.* § 752.056(a). Each day of a continuing violation of section 752.053 constitutes a separate violation for the civil penalty. *Id.* § 752.056(b).

29. A local entity is liable for civil penalties, fees, and costs if it is found to be in violation of section 752.053. *Id.* §§ 402.006, 752.056. The court that hears an action brought under section 752.055 against a local police department or police chief “shall determine the amount of the civil penalty under this section.” *Id.* § 752.056(c).

30. SB 4 waives governmental immunity for a local entity. *Id.* § 752.056(e).

VI. FACTUAL BACKGROUND

31. SAPD is a “local entity” as defined by SB 4. Tex. Gov’t Code § 752.051(5).

32. Chief McManus is a “local entity” as defined by SB 4. *Id.*

33. The City is a “local entity” as defined by SB 4. *Id.*

34. City Manager Sculley is a “local entity” as defined by SB 4. *Id.*

35. Chief McManus is the policymaker for SAPD, which is a department of the City.

Citizen complaints about December 23, 2017

36. Beginning in January 2018, the Attorney General began receiving citizen complaints about a December 23, 2017 incident involving SAPD, Chief McManus, and approximately a dozen suspected aliens found in the back of a trailer in the City of San Antonio.

37. The sworn citizen complaints, dated February 6, 2018, February 13, 2018, and June 28, 2018, alleged defendants violated section 752.053 of the Texas Government Code during the December 23, 2017 incident. Thereafter, the Attorney General received additional, similar complaints about the December 23 event involving McManus.

38. Based on the sworn complaints, the Attorney General began an investigation into the matter and gathered the facts pleaded herein.

The scene: A tractor-trailer with 12 suspected aliens inside

39. On December 23, 2017, at approximately 12:03 p.m., SAPD received a call about a suspicious eighteen-wheeler containing multiple occupants in its trailer.

40. Upon arrival, the SAPD patrol officer found twelve suspected aliens, ten males and two females, including one 16-year-old minor.

41. A witness on the scene informed an SAPD officer that he had called SAPD about similar activity regarding trailers in the same location before, only days before, but SAPD never responded.

42. Eventually, an SAPD officer contacted Homeland Security Investigations (“HSI”), a division of ICE, to inform them about the suspected aliens.

43. HSI informed SAPD that it was en route to the scene and asked to take custody of the suspected aliens.

44. At or around this time, Deputy City Manager Eric Walsh contacted Chief McManus at home to discuss the incident. McManus then traveled to the incident scene.

45. At the scene, Chief McManus learned that the trailer occupants were suspected aliens and that one was possibly a minor. Pursuant to City policy, McManus called an attorney from an immigrant legal services organization and requested his presence at the scene to provide legal services to the suspected aliens.

46. SAPD officers initially assumed and agreed, as is customary, that the case would be referred to HSI.

Federal immigration authorities arrive at the scene

47. At approximately 1:30 p.m., ICE Enforcement and Removal Operations (“ERO”) contacted HSI Special Agent Brian Johnson, who was on call, and asked him to respond to the scene. ERO informed Special Agent Johnson that SAPD was on scene with a tractor-trailer that had contained twelve suspected aliens in addition to a driver. Johnson often worked with SAPD doing forensic analysis for SAPD Special Victims Unit (“SVU”) and had a desk and badge access to SAPD headquarters.

48. Special Agent Johnson was put in touch with an SAPD officer on the scene. As the officer briefed Johnson, Johnson said he was approximately an hour

and a half away from the location but would send ERO to respond to the scene to transport the suspected aliens back to HSI.⁶ Johnson informed SAPD that HSI would take custody of the suspected aliens.

49. After speaking to the SAPD officer, Special Agent Johnson called ERO and told them to send a transport bus to pick up the suspected aliens at the scene. Johnson also called his supervisor, who gathered agents at ERO who were ready to receive the suspected aliens. HSI began its efforts to take custody of the suspected aliens.

50. While Special Agent Johnson drove to the scene, he maintained contact with SAPD and told them that ERO was sending a transport bus to pick up the suspected aliens. During the drive, SAPD told Johnson that an SAPD transport vehicle had arrived at the scene and that SAPD could transport the suspected aliens to SAPD headquarters where ERO could pick them up. As a result, Johnson drove directly to SAPD headquarters.

51. Special Agent Johnson arrived at SAPD headquarters at approximately 3:00 p.m., but the SAPD transport van had not yet arrived, so he contacted SAPD and learned that the van was still at the scene.

52. Special Agent Johnson then drove to the scene and arrived at approximately 3:20 p.m. There, he found all twelve suspected aliens from the tractor-trailer sitting in the SAPD transport van. Upon arrival, Special Agent Johnson was

⁶ Special Agent Johnson was the HSI duty agent, and he was responding from his residence in Bulverde, Texas.

approached by an officer who told him that Chief McManus wanted to speak to him in private.

Chief McManus and SAPD prohibit enforcement of immigration laws and refuse to cooperate with federal immigration authorities

53. In a departure from customary procedure, Chief McManus advised Special Agent Johnson that SAPD was going to take the case under the state smuggling statute. The District Attorney later stated that his office had never taken such a case, and no SAPD officers, including McManus, could recall another occasion when SAPD attempted to investigate or prosecute a case under the state smuggling statute.

54. Johnson asked McManus if he wanted Johnson to help the SAPD detectives. Chief McManus told Johnson “no” and refused Johnson’s offer to assist the detectives.

55. Chief McManus also expressed concern about Johnson displaying his HSI badge because he believed that it might scare the suspected aliens. In response, Johnson offered to put on a jacket to cover the badge, but McManus walked away from Johnson and did not respond to his offer.

56. At the scene, the immigration lawyer called by SAPD provided advice to the suspected aliens, and McManus advised officers that the immigration lawyer could help by translating for them. The lawyer introduced McManus to the immigrants and told them that SAPD does not work with immigration.

57. While investigating the scene, SAPD learned that the trailer originated from Michigan and picked up the suspected aliens from a warehouse in Laredo, Texas.

58. SAPD also learned that some individuals who were in the trailer left the scene before SAPD arrived.

59. Moreover, witnesses reported to an SAPD officer that they had called in previous human trafficking incidents at this same location, as recently as two nights before, but SAPD never responded.

60. SAPD officers at the scene believed HSI would take over the investigation.

61. SAPD and McManus did not run the personal information of the suspected aliens through criminal history databases while on the scene or at SAPD headquarters.

62. At approximately 3:30 p.m., Special Agent Johnson called Assistant Special Agent-in-Charge Craig Larabee to brief him on the details of the scene. Johnson advised Larabee that SAPD was pursuing the case under the state smuggling statute. Larabee then called another SAPD officer to confirm that SAPD intended to process the case under the state smuggling statute, an unprecedented decision. That officer referred Larabee to Chief McManus. Larabee told the SAPD officer that HSI would take the criminal case and process the suspected aliens.

63. Soon after his call with Larabee, Johnson approached the SAPD officer who had contacted him, provided him the phone number for ERO, and told the officer

to contact ERO before releasing the suspected aliens because ERO was ready to process them. SAPD declined this request.

Chief McManus and SAPD take the suspected aliens to headquarters and continue to prohibit involvement by federal immigration authorities

64. SAPD transported the twelve suspected aliens to SAPD headquarters. The suspected aliens provided statements to SAPD.

65. Special Agent Johnson also went to SAPD headquarters. When Johnson arrived, he went to Sergeant James Cline's office. While there, Cline told Chief McManus that SAPD did not have enough detectives fluent in Spanish to conduct all the interviews. Johnson, a fluent Spanish speaker, offered to help the detectives with the interviews. Chief McManus ignored his offer and walked out of the room.

66. Special Agent Johnson went to the monitor room where he could watch and listen to the interviews.

67. Special Agent Johnson observed the interview of the driver, learned that he was cooperating, and that the driver ultimately confessed to his part in the smuggling scheme.

68. During the interview the driver also informed the SAPD detectives that he had traveled through multiple jurisdictions outside of San Antonio.

69. Many of the suspected aliens admitted to crossing the United States border outside of normal entry points, and at least one admitted to being deported in the past.

70. During the interviews of the suspected aliens and driver, other officers told Sergeant Cline that Chief McManus said the suspected aliens should be released.

Cline called Deputy Chief Anthony Muro, who confirmed with his superior officer that Chief McManus had ordered the immigrants to be released rather than given to HSI. Deputy Chief Muro even requested and received the order in writing.

71. Based on direction from his superior officers, Deputy Chief Muro directed Sergeant Cline to release the suspected aliens.

72. In light of Chief McManus's actions at the scene and his response to HSI Special Agent Johnson, Johnson was directed by HSI supervisors to leave SAPD Headquarters.

73. As Johnson began to leave SAPD, he stopped at Sergeant Cline's office. Cline told Johnson that Chief McManus had ordered the release of the immigrants. Johnson told Cline to call ERO because they would come and pick up the suspected aliens, again requesting that SAPD release the aliens to HSI. In response, Cline said he could not call ERO because he had been given a direct order through his chain of command to release the suspected aliens.

Chief McManus and SAPD release the suspected aliens to Catholic Charities and RAICES

74. Despite multiple requests, SAPD and Chief McManus did not allow ERO to pick up or process any of the suspected aliens. Instead, they were released by SAPD.

75. Further, pursuant to policies adopted by the City, McManus personally called an immigration lawyer to the scene to represent the suspected aliens during his department's own active criminal investigation. McManus also contacted Catholic

Charities to transport the suspected aliens away from SAPD headquarters and away from ERO.

76. While the suspected aliens were at SAPD headquarters, McManus did not order and SAPD did not:

- a. Collect fingerprints or take other steps to confirm their identities or immigration status;
- b. Run information through criminal databases;
- c. Request that Johnson submit any of the suspected aliens' information to the ICE database;
- d. Obtain verified contact information for the suspected aliens so they could be contacted as witnesses in the alleged state smuggling case; or
- e. Call ERO to request transportation to federal custody or so that ICE could run the suspected aliens' information through its database.

77. The suspected aliens' verified contact information and current locations are unknown.

78. SAPD released the alleged smuggler without charging him with a crime.

79. SAPD and McManus repeatedly and deliberately refused to cooperate with HSI and Special Agent Johnson's request to transport the suspected aliens to HSI.

80. Chief McManus and SAPD adopted and enforced a policy to prohibit and materially limit the enforcement of immigration laws. They prevented HSI from participating in the investigation of the smuggling incident, collecting information about the suspected aliens, interviewing the suspected aliens, and taking custody of the suspected aliens.

81. SAPD and McManus prohibited and materially limited HSI's enforcement of federal immigration laws.

Defendants' policies prohibiting and materially limiting enforcement of immigration laws

82. In addition, SAPD has a written policy of effectively deterring contact with federal immigration authorities when it encounters potential suspected aliens.

83. SAPD promulgated General Manual Procedure 618 – Racial/Bias Profiling/Immigration Policy, effective September 1, 2017, the day that SB 4 took effect throughout Texas.

84. It is SAPD's policy, codified in SAPD General Manual Procedure 618.11 Subpart A, that "[o]fficers will not refer persons to Immigration and Customs Enforcement (ICE) unless the person has a federal deportation warrant."

85. The policy effectively prohibits SAPD officers from transferring suspected aliens to federal immigration officers, absent federal officials providing proof of a federal deportation warrant. But not all aliens unlawfully present in the United States are subject to deportation warrants. And the federal government has the legal right to apprehend those individuals as well. Similarly, the policy also effectively discourages SAPD officers from contacting or referring individuals to ICE,

since SAPD officers ordinarily do not possess the threshold information required by the SAPD Immigration Policy to initiate contact with ICE without contacting ICE in the first place. Thus, it is SAPD's policy to effectively prohibit SAPD officers from cooperating with federal immigration authorities.

86. Yet SAPD and the City enforce a policy of contacting immigration attorneys and Catholic Charities to assist suspected aliens (and suspected felons) at suspected crime scenes.

87. On August 31, 2017, the day before SB 4 took effect, the City adopted Ordinance 2017-08-31-0614, which authorized Defendant Sculley to negotiate and execute contracts for \$250,000 in legal services from Texas RioGrande Legal Aid, Catholic Charities, and RAICES, the same immigration law firm called to the scene in this case. Of this amount, the City directed Defendant Sculley to spend \$200,000 on services to immigrants and suspected aliens, which includes helping these individuals navigate federal immigration laws, among other things. According to Ordinance 2017-08-31-0614, \$100,000 of the funding came from a grant from Vera Institute of Justice SAFE (Safety and Fairness for Everyone) Cities Network, an organization based in New York City that promotes representation of immigrants in removal defense.

88. As a result of Ordinance 2017-08-31-0614 and the December 23, 2017 incident, SAPD developed a Communication Protocol for Human Smuggling or Trafficking Incidents. Part of that Protocol requires Chief McManus's office to notify Catholic Charities and the immigration law firm of any smuggling or trafficking

incident so that these agencies can provide translation services, aid, and legal services to suspected felons (suspected illegal aliens).

VII. FIRST CAUSE OF ACTION

Prohibiting or Materially Limiting Enforcement of Immigration Laws on December 23, 2017

89. Plaintiff repeats and realleges the previous paragraphs as if fully restated here.

90. Under SB 4, a local entity “may not: (1) adopt[or] enforce . . . a policy under which the entity or department prohibits or materially limits the enforcement of immigration laws.” Tex. Gov’t Code § 752.053(a).

91. The City and McManus violated section 752.053 on December 23, 2017, by prohibiting the enforcement of immigration laws when they failed to turn over the suspected aliens to ICE or HSI after repeated requests from these agencies to take the suspected aliens into custody.

92. The City and McManus violated section 752.053 on December 23, 2017, by materially limiting the enforcement of immigration laws when they failed to turn over the suspected aliens to ICE or HSI after repeated requests from these agencies to take them into custody.

VIII. SECOND CAUSE OF ACTION

Prohibiting or Materially Limiting Assistance or Cooperation with Federal Immigration Officer on December 23, 2017

93. Plaintiff repeats and realleges the previous paragraphs as if fully restated here.

94. Under SB 4, a local entity “may not prohibit or materially limit a person who is a commissioned peace officer” from “assisting or cooperating with a federal immigration officer as reasonable or necessary, including providing enforcement assistance” Tex. Gov’t Code § 752.053(b)(3).

95. On December 23, 2017, the City and McManus prohibited SAPD officers from assisting or cooperating with ICE, HSI, and HSI Special Agent Johnson in the enforcement of federal immigration laws.

96. On December 23, 2017, the City and McManus materially limited SAPD officers from assisting or cooperating with ICE, HSI, and HSI Special Agent Johnson in the enforcement of federal immigration laws.

IX. THIRD CAUSE OF ACTION

Policies Prohibiting or Materially Limiting Enforcement of Immigration Laws

97. Plaintiff repeats and realleges the previous paragraphs as if fully restated here.

98. Under SB 4, a local entity “may not: (1) adopt[or] enforce . . . a policy under which the entity or department prohibits or materially limits the enforcement of immigration laws.” Tex. Gov’t Code § 752.053(a).

99. SAPD General Manual Procedure 618.11 – Racial/Bias Profiling/Immigration Policy prohibits its officers from referring persons to ICE unless the person has a federal deportation warrant. But SAPD officers would not know if a person has a federal deportation warrant unless they contacted ICE to obtain that information. Thus, SAPD’s Procedure 618.11 is a de facto policy of

prohibiting or materially limiting SAPD officers from complying with federal immigration laws.

100. The City, McManus, and Sculley have a policy of contacting Catholic Charities any time they encounter a smuggling or trafficking scene where suspected aliens are present and contacting immigration counsel to represent the suspected aliens at the scene. This prohibits and materially limits the enforcement of immigration laws.

101. In addition, the City, McManus, and Sculley have demonstrated a pattern or practice of ignoring potential human smuggling incidents involving individuals smuggled in trailers.

X. INJUNCTIVE RELIEF

102. Plaintiff repeats and realleges the previous paragraphs as if fully restated here.

103. Texas Government Code section 752.055 authorizes the Attorney General to seek equitable relief to enjoin McManus and Sculley from future violations of SB 4. *Id.* § 752.055(b).

104. Plaintiff asks the Court to enjoin Defendants the City and McManus from future violations of Texas Government Code section 752.053.

105. Plaintiff asks the Court to enjoin Defendants the City, McManus, and Sculley from enforcing SAPD General Manual Procedure 618.11 (Immigration Policy).

XI. CIVIL PENALTIES

106. Plaintiff repeats and realleges the previous paragraphs as if fully restated here.

107. Texas Government Code section 752.056 provides that a local entity that violates section 752.053 is liable for civil penalties in an amount not less \$1,000 or more than \$1,500 for the first violation, and not less than \$25,000 and not more than \$25,500 for each subsequent violation. Tex. Gov't Code § 752.056(a)(1–2). Each day of a continuing violation of section 752.053 constitutes a separate violation for the calculation of civil penalties under section 752.056. *Id.* § 752.056(b).

108. Plaintiff asks the Court to award civil penalties in the amount of \$1,500 for the first violation, and \$25,500 for each subsequent violation based on Defendants' violations of section 752.053.

109. Plaintiff asks the Court to award a civil penalty of at least \$1,500 for Defendant McManus's violation of section 752.053(a)(1) on December 23, 2017.

110. Plaintiff asks the Court to award a civil penalty of at least \$1,500 for Defendant City's violation of section 752.053(a)(1) on December 23, 2017.

111. Plaintiff asks the Court to award a civil penalty of at least \$1,500 for Defendant McManus's violation of section 752.053(b)(3) on December 23, 2017.

112. Plaintiff asks the Court to award a civil penalty of at least \$1,500 for Defendant City's violation of section 752.053(b)(3) on December 23, 2017.

113. Plaintiff asks the Court to award a civil penalty of at least \$1,500 for Defendants' adoption, enforcement, and endorsement of the City's SAPD General

Manual Procedure 618.11 (Immigration Policy), which became effective September 1, 2017. Plaintiff further asks the Court to award a civil penalty of at least \$25,500 per day, based on a continuing violation from September 2, 2017, to the present day, for Defendants' adoption, enforcement, and endorsement of the City's SAPD General Manual Procedure 618.11 (Immigration Policy).

XII. ATTORNEY'S FEES AND COSTS

114. Plaintiff repeats and realleges the previous paragraphs as if fully restated here.

115. Texas Government Code section 402.006 provides for the recovery of attorney's fees and court costs, and the Attorney General may charge a reasonable fee for the electronic filing of documents. *Id.* § 402.006(c), (e).

116. Plaintiff asks the Court to award its full attorney's fees and costs, which will be provided at the appropriate time.

XIII. REQUEST FOR DISCLOSURE

117. Under Texas Rule of Civil Procedure 194, Texas requests that Defendants disclose, within 30 days of the service of this request, the information or material described in Rule 194.2.

XIV. PRAYER

WHEREFORE, Plaintiff prays that the Court enter judgment against Defendants and:

- A. Issue a writ of injunction prohibiting Defendants the City of San Antonio and McManus from future violations of Texas Government Code § 752.053;
- B. Issue a writ of injunction prohibiting Defendants the City of San Antonio, McManus, and Sculley from enforcing the City's SAPD General Manual Procedure 618.11 (Immigration Policy);
- C. Award a civil penalty of \$1,500 against Defendant McManus for the violation of Texas Government Code § 752.053(a)(1) on December 23, 2017;
- D. Award a civil penalty of \$1,500 against Defendant City of San Antonio for the violation of Texas Government Code § 752.053(a)(1) on December 23, 2017;
- E. Award a civil penalty of \$1,500 against Defendant McManus for the violation of Texas Government Code § 752.053(b)(3) on December 23, 2017;
- F. Award a civil penalty of \$1,500 against Defendant City of San Antonio for the violation of Texas Government Code § 752.053(b)(3) on December 23, 2017;

- G. Award civil penalties of \$1,500 for the first day, and \$25,500 for each subsequent day, from September 1, 2017, to the present day, for Defendants' adoption, enforcement, and endorsement of the City's SAPD General Manual Procedure 618.11 (Immigration Policy).
- H. Award attorney's fees and costs to the Attorney General; and
- I. Award all such other and further relief, at law and in equity, to which Plaintiff may show himself justly entitled.

Respectfully submitted this 11th day of February 2019.

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of February, 2019, a true and correct copy of the foregoing Plaintiff's First Amended Petition was electronically filed and e-served on all known counsel in this case.

/s/ Patrick K. Sweeten
PATRICK K. SWEETEN
Associate Deputy for Special
Litigation

CAUSE NO. D-1-GN-18-007133

KEN PAXTON, in his official capacity as	§	IN THE DISTRICT COURT OF
ATTORNEY GENERAL OF TEXAS,	§	
Plaintiff,	§	
	§	
v.	§	
	§	TRAVIS COUNTY, TEXAS
WILLIAM MCMANUS, in his official	§	
capacity as Chief of San Antonio Police	§	
Department; CITY OF SAN ANTONIO; and	§	
ERIK WALSH, in his official capacity as	§	
City Manager of City of San Antonio,	§	
Defendants.	§	345TH JUDICIAL DISTRICT

DEFENDANTS' FIRST AMENDED ANSWER

TO THE HONORABLE COURT:

Defendants William McManus ("Chief McManus"), in his official capacity as Chief of the San Antonio Police Department ("SAPD"), the City of San Antonio, and Erik Walsh, in his official capacity as City Manager of the City of San Antonio ("City Manager Walsh"), (collectively, "Defendants") file this First Amended Answer to the First Amended Petition ("Petition") filed by Ken Paxton, in his official capacity as Attorney General of Texas ("Plaintiff").

1. Plaintiff filed this lawsuit to make a political statement. Plaintiff's allegations have no basis in law or in fact. Defendants' actions and policies have at all times been consistent with both state and federal laws.

2. Plaintiff's claims are based on alleged violations of Texas Government Code, Title 7, Chapter 752, Subchapter C, Section 752.053, better known as Senate Bill 4 ("SB4"). Nothing in SB4 changes federal immigration law or the jurisdiction of local police departments.

3. It is not a crime for an undocumented person to be present in the United States. *See Arizona v. U.S.*, 567 U.S. 387, 407 (2012). That was true before the passage of SB4 and remains

true today. Given the pervasive, misleading commentary on immigration issues in Texas and across the nation, this fact may be lost. But the law remains clear—if an undocumented person is merely present in Texas, that individual is not committing a criminal offense. *See id.* Furthermore, the removal of an undocumented person by federal immigration authorities is a civil matter, not a criminal one. *Id.*

4. Congress has specified which undocumented persons may be removed from the United States and the procedures for doing so. Decisions about whether to remove an undocumented person from the United States are made at the discretion of the Federal Government. Local police departments like SAPD may not detain individuals simply because those individuals may be removable. *See id.* at 387. SAPD is charged with enforcing criminal laws, not immigration laws. SAPD can only arrest an individual if there is probable cause to believe that individual committed a crime. SB4 did not change this well-settled principle.

5. SB4 does not require local police departments like SAPD to enforce immigration laws. Instead, SB4 simply prohibits SAPD and other local entities from adopting or enforcing policies that prohibit or materially limit the enforcement of immigration laws. In other words, SB4 does not charge local entities with action; instead, it prohibits them from impeding the actions of immigration authorities. Defendants are not violating, and have never violated, SB4.

6. Contrary to Plaintiff's allegations in this lawsuit, SAPD cooperated with federal immigration authorities before the passage of SB4 and continues to cooperate with them today. For example, SAPD provides federal immigration authorities with daily access to its detention facility and regularly complies with legal detainer requests. San Antonio is not a "sanctuary city," as Plaintiff uses that term in his Petition, but SAPD has no legal authority to hold individuals unless they are detained or arrested for matters within the jurisdiction of local law enforcement.

7. This lawsuit reflects the Attorney General's pursuit of a political agenda. There is no basis in law or fact for any of his claims in the Petition. Defendants deny each and every allegation against them in the Petition and further answer as follows:

I. FACTUAL BACKGROUND

A. SAPD General Manual and Immigration Policy

8. SAPD publishes a General Manual to convey standard operating procedures of the department. It is issued under the authority of the Chief of Police and has the effect of an order. Procedure 618 of the SAPD General Manual ("Procedure 618") is entitled "Racial/Bias Profiling/Immigration Policy." Procedure 618 was specifically drafted to be consistent with U.S. Supreme Court rulings and Texas law, including SB4.

9. Procedure 618 initially sets out two core policies: 1) to provide equal protection to all citizens by prohibiting racial/bias profiling in any aspect of law enforcement-initiated actions; and 2) to prohibit officers from using race, national origin, citizenship, religion, ethnicity, age, gender, sexual orientation, or physical or mental disability for a law-enforcement-initiated action, except to determine whether a person matches a specific description of a particular suspect. SAPD General Manual § 618.02(A) and (B). In furtherance of these policies, Procedure 618.11 sets forth SAPD's "Immigration Policy." Specifically, Procedure 618.11 states that "[o]fficers will not refer persons to Immigration and Customs Enforcement (ICE) unless the person has a federal deportation warrant[,] and that "[n]ational origin, immigration status, ethnicity [and] race are not a basis for an arrest and officers will not base any arrest on those conditions." *Id.* § 618.11(A). Officers will verify identification and perform a background check on people with whom they are issuing a citation, legally detaining, arresting, or processing for magistration. *Id.* §§ 618.11(A)(3) and (B). Further, Procedure 618.11 states that "[o]fficers will not detain and/or arrest an individual based on

the fact or suspicion that they are in the United States illegally.” *Id.* § 618.11(C). To that end, immigration status alone is not probable cause for an arrest. *Id.* § 618.11(C)(3).

10. SAPD’s immigration policy, as outlined in Procedure 618.11, is rooted in public policy considerations, Texas law, and federal court opinions. Police departments work best when they have the trust and cooperation of their communities. When members of the community fear that they or their loved ones may be turned over to immigration officials, they may avoid contact with the police. This fear and distrust make investigating, solving, and preventing crimes more difficult for SAPD and police departments throughout Texas.

B. December 23, 2017 Incident

11. At approximately noon on December 23, 2017, SAPD was called to the scene of a suspicious tractor-trailer carrying 12 individuals. SAPD sent an officer to the scene and also contacted the Homeland Security Law Enforcement Hotline to notify the Department of Homeland Security of the incident. SAPD was advised that an officer from ICE and Homeland Security Investigations (“HSI”) would be sent to the scene. Chief McManus responded to the scene, along with multiple SAPD officers from several different units. Early in its investigation, SAPD learned that the tractor-trailer started its journey in Laredo, Texas and did not cross the Mexico border. That information, along with additional facts gathered at the scene and during police interviews of the driver, passenger, and 12 witnesses in the tractor-trailer, informed SAPD’s conclusion that it was dealing with an intrastate human-smuggling case, rather than a human-trafficking case.

12. Although often used interchangeably, the terms “human trafficking” and “human smuggling” are not synonymous. “Human Trafficking is defined as the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force,

fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.” <https://www.sanantonio.gov/SAPD/Human-Trafficking>; *see also* Texas Penal Code, Title 5, § 20A—Trafficking of Persons. “Human Smuggling is defined as the importation of people into the United States involving the deliberate evasion of immigration laws.” <https://www.sanantonio.gov/SAPD/Human-Trafficking>; *see also* Texas Penal Code, Title 5, § 20.05—Smuggling of Persons. The term “human smuggling” includes both bringing undocumented persons into the United States as well as the unlawful transportation and harboring of undocumented persons who are already in the United States. *Id.* In short, human trafficking is exploitation-based, whereas human smuggling is transportation-based.

13. Several hours passed during the human-smuggling incident on December 23, and HSI still had not arrived at the scene. Based on the initial investigation and the delayed response of HSI, Chief McManus made the decision to process the case under the state smuggling statute, Texas Penal Code, Chapter 20, § 20.05. Plaintiff characterizes Chief McManus’s decision to process the case under the state smuggling statute as “a departure from customary procedure” and “an unprecedented decision.” First Am. Pet. at ¶¶ 53, 62. Plaintiff further implies that Chief McManus made this decision to avoid the involvement of federal immigration authorities. These allegations are false. Chief McManus decided to employ the state statute to enable SAPD to take control of the scene, due in part to the delayed response of federal immigration authorities.

14. HSI Special Agent Johnson arrived at the scene hours after SAPD and HSI were notified of the incident. He arrived by himself with no additional resources from HSI. Chief McManus informed him that SAPD was handling the incident under the state smuggling statute. Special Agent Johnson did not express any disagreement with that position. Instead, he asked Chief McManus if he could assist. Chief McManus said yes, and suggested that Special Agent

Johnson cover the Homeland Security logo before interacting with the witnesses. That is the first and only conversation that Chief McManus recalls having with Special Agent Johnson.

15. Upon their return to SAPD headquarters, SAPD officers conducted thorough interviews of the driver, passenger, and all 12 witnesses. Contrary to Plaintiff's allegations, SAPD had an ample number of Spanish-speaking officers to conduct all the witness interviews. *See* First Am. Pet. at § 65. Special Agent Johnson observed the interviews. Following the interviews, the witnesses left SAPD headquarters. Because they were not criminal suspects, SAPD had no authority to detain any of the 12 witnesses. HSI was aware of the witnesses' location at all times and could have taken any or all of the witnesses into custody. SAPD and Chief McManus deny that they did not allow ICE Enforcement and Removal Operations to pick up or process the witnesses, as alleged in paragraph 74 of the First Amended Petition.

16. Unlike the 12 witnesses, the driver of the tractor-trailer was suspected of committing a crime, and he was taken into custody. Plaintiff's allegation that no criminal case has been filed against any individual arising out of the December 23, 2017 incident is false. *See* First Am. Pet. at ¶¶ 9-10. In fact, the driver was formally charged with smuggling of persons under Section 20.05 of the Texas Penal Code—a third degree felony—and the driver pled and accepted deferred adjudication. Plaintiff's allegation that "SAPD released the alleged smuggler without charging him with a crime" is also false. First Am. Pet. at ¶ 78. SAPD filed a Charge and Disposition Report against the driver with the Bexar County District Attorney's Office for human smuggling. SAPD was committed to working with that office to prosecute the driver.

C. Communications Protocol for Human Smuggling or Trafficking Incidents

17. Following the December 23, 2017 incident, Chief McManus and HSI Special Agent in Charge Shane Folden committed to ongoing discussions aimed at developing a protocol for

coordination in the context of human-trafficking and human-smuggling incidents. Those discussions resulted in the SAPD Communication Protocol Human Smuggling or Trafficking Incident (“Communication Protocol”), which establishes the protocol if SAPD determines undocumented persons are potential witnesses to an offense of human smuggling or trafficking. The Communications Protocol requires, *inter alia*, that SAPD notify HSI of the incident. The Communications Protocol also states that, “[u]nless HSI investigators clearly state they will lead the investigation, SAPD personnel will conduct the investigation under SAPD procedures.” In addition, the Communications Protocol requires SAPD to notify the Office of the Chief and the City of San Antonio’s Immigration Liaison. The Office of the Chief will also notify two social services agencies—Catholic Charities and RAICES.

18. Contrary to Plaintiff’s allegations, the Communications Protocol does not provide for “immigration counsel to represent the suspected aliens at the scene.” First Am. Pet. at ¶ 100. Instead, the Communications Protocol states these agencies can provide “necessary translation services” and “can also assist in providing aid and comfort to undocumented persons who are not arrested.” This protocol allows for humanitarian assistance for persons in need—often dire need—of assistance. This protocol does not prohibit or materially limit the enforcement of immigration laws as alleged by Plaintiff. *See id.* Plaintiff’s allegation that providing aid and comfort to undocumented witnesses of human trafficking or smuggling violates state law is not only preposterous, but reprehensible.

II. DEFENDANTS DID NOT VIOLATE SB4 ON DECEMBER 23, 2017

19. Plaintiff’s Petition alleges that Defendants violated two provisions of SB4 on December 23, 2017—Sections 752.053(a)(1) and 752.053(b)(3). Plaintiff’s claims lack merit for a variety of legal and factual reasons including, but not limited, to the reasons set forth below.

A. Defendants Did Not Violate Section 752.053(a)(1)

20. In his first cause of action, Plaintiff alleges that Chief McManus and SAPD violated SB4's provision prohibiting a local entity from adopting or enforcing a "policy" that "prohibits or materially limits the enforcement of immigration laws." Tex. Gov't Code § 752.053(a)(1) ("§ 752.053(a)(1)"). These allegations are based entirely on the incident that took place in San Antonio on December 23, 2017. Chief McManus and SAPD deny these allegations in their entirety.

21. As an initial matter, Plaintiff does not plead any facts to suggest that the actions taken by SAPD or Chief McManus on December 23, 2017 constitute a "policy," as required for a violation of § 752.053(a)(1). To the contrary, Plaintiff repeatedly alleges that the actions of Chief McManus and SAPD on December 23, 2017 were "a departure from customary practice" and "unprecedented." First Am. Pet. at ¶¶ 6, 52, 62. On their face, these allegations contradict Plaintiff's claim that SAPD and McManus adopted or enforced a "policy" on December 23, 2017 to prohibit or materially limit the enforcement of immigration laws, as required for a violation of § 752.053(a)(1); *see also* Tex. Gov't Code § 752.051(6) (defining "policy" to include "a formal, written rule, order, ordinance, or policy and an informal, unwritten policy").

22. Setting aside SB4's "policy" requirement, the conduct alleged by Plaintiff does not amount to prohibiting or materially limiting the enforcement of immigration laws. Plaintiff alleges that SAPD violated SB4 by failing to turn over the witnesses in the back of the tractor-trailer "after repeated requests from [ICE or HSI] to take the suspected aliens into custody." First Am. Pet. at ¶ 91; *accord id.* at ¶ 92. These allegations are also false. Neither Chief McManus nor SAPD prohibited or materially limited HSI or ICE from enforcing immigration

laws. Plaintiff admits that SAPD notified HSI, which deployed Special Agent Brian Johnson to the scene of the tractor-trailer incident on December 23, 2017. *See id.* at ¶¶ 5, 42–42, 47. Plaintiff further admits that Special Agent Johnson drove to the scene, maintained contact with SAPD, and even watched and listened to the interviews with the driver of the tractor-trailer and the 12 witnesses. *See id.* at ¶¶ 50, 66. The federal immigration agencies were aware of the location of the 12 witnesses at all times and even observed SAPD’s interviews with them. *See id.* at ¶ 66. SAPD did not prohibit or materially limit HSI or ICE from taking the witnesses into custody. HSI or ICE chose not to take the witnesses into custody.

B. Defendants Did Not Violate Section 752.053(b)(3)

23. In his second cause of action against SAPD and Chief McManus, Plaintiff alleges violation of SB4’s provision prohibiting a local entity from prohibiting or materially limiting employees from “assisting or cooperating with a federal immigration officer . . .” Tex. Gov’t Code § 752.053(b)(3) (“§ 752.053(b)(3)”). Specifically, Plaintiff alleges that SAPD and Chief McManus prohibited and materially limited SAPD officers from assisting or cooperating with ICE, HSI, and Special Agent Johnson in the enforcement of federal immigration laws. First Am. Pet. at ¶¶ 95–96. These allegations are false.

24. The factual recitations in Plaintiff’s own pleading belie Plaintiff’s claims and demonstrate SAPD’s coordination with HSI on December 23, 2017. *See id.* at ¶ 5 (“SAPD also notified U.S. Immigration and Customs Enforcement (‘ICE’) Homeland Security Investigations (‘HSI’), which deployed Special Agent Brian Johnson to the scene.”); *Id.* at ¶ 42 (“Eventually, an SAPD officer contacted Homeland Security Investigations (‘HSI’), a division of ICE, to inform them about the suspected aliens.”); *Id.* at ¶ 47 (“At approximately 1:30 p.m., ICE Enforcement and Removal Operations (‘ERO’) contacted HSI Special Agent Brian Johnson, who

was on call, and asked him to respond to the scene.”); *Id.* at ¶ 50 (“While Special Agent Johnson drove to the scene, he maintained contact with SAPD”); *Id.* at ¶ 66 (“Special Agent Johnson went to the monitor room where he could watch and listen to the interviews.”). These and other facts demonstrate that SAPD assisted and cooperated with immigration officials by alerting HSI to the incident, asking HSI to respond to the scene, and allowing Special Agent Johnson to watch and listen to interviews with witnesses.

C. An Injunction Renders Groundless Several of Plaintiff’s Claims

25. On August 30, 2017, Chief Judge Orlando Garcia of the Western District of Texas enjoined the State of Texas and Plaintiff (among others) from “implementing and enforcing” certain provisions in SB4. *See City of El Cenizo v. State*, 264 F. Supp. 3d 744, 812–13 (W.D. Tex. 2017). The “endorse” provision of § 752.053(a)(1) and the “materially limits” provisions of § 752.053(a)(1) and § 752.053(b)(3) were among the provisions enjoined. *See id.* On September 25, 2017, the Fifth Circuit stayed portions of the injunction. *City of El Cenizo, Tex. v. Texas*, No. 17-50762, 2017 WL 4250186, at *2 (5th Cir. Sept. 25, 2017). But the Fifth Circuit left in place those portions of the injunction relating to the “endorse” provision of § 752.053(a)(1) and the “materially limits” provisions of § 752.053(a)(1) and § 752.053(b)(3). *See id.* On March 13, 2018, the Fifth Circuit issued an opinion affirming the injunction for the “endorse” provision of § 752.053(a)(1) as it pertains to elected officials and vacating the injunction for the “endorse” provision of § 752.053(a)(1) as it pertains to non-elected officials and employees, as well as the “materially limits” provisions of § 752.053(a)(1) and § 752.053(b)(3). *See City of El Cenizo, Tex. v. Texas*, 885 F.3d 332 (5th Cir. 2018). In his Petition, Plaintiff acknowledges only the Fifth Circuit’s latter opinion affirming in part and vacating in part the district court’s preliminary

injunction. *See* First Am. Pet. at p. 7, n.5. In doing so, Plaintiff ignores that the injunction was in effect during periods that are relevant to this lawsuit.

26. At the time of the December 23, 2017 incident at issue in Plaintiff's first and second causes of action, the "materially limits" provisions of § 752.053(a)(1) and § 752.053(b)(3) were enjoined from implementation and could not be enforced. Thus, Plaintiff's claims that SAPD and Chief McManus violated these provisions on December 23, 2017 are without merit. *See* First Am. Pet. at ¶¶ 92, 96, 99, 109–13. Likewise, because the injunction relating to the "materially limits" provisions of § 752.053(a)(1) remained in effect until March 13, 2018, Plaintiff's third cause of action is without merit to the extent it hinges on SAPD's Procedure 618.11 materially limiting the enforcement of immigration laws between September 1, 2017 and March 12, 2018. Finally, because the "endorse" provision of § 752.053(a)(1) has been enjoined from implementation and enforcement since August 30, 2017 to the extent it pertains to elected officials—i.e., it has not been implemented to this day—Plaintiff's third cause of action, including the associated request for penalties, is without merit to the extent it hinges on any elected official's alleged endorsement of Procedure 618.11.

27. In sum, Plaintiff's causes of action based on the "endorse" provision of § 752.053(a)(1) are wholly groundless to the extent they pertain to elected officials because an injunction precludes the implementation and enforcement of that provision in relation to elected officials. In addition, Plaintiff's causes of action based on the "materially limits" provisions of § 752.053(a)(1) and § 752.053(b)(3) are partially groundless because an injunction precluded their implementation and enforcement between September 1, 2017 and March 13, 2018.

III. DEFENDANTS' POLICIES DO NOT VIOLATE SB4

28. As indicated above, Plaintiff's third cause of action rests in part on allegations that Defendants violated SB4's provision barring a local entity from adopting or enforcing a policy that "prohibits or materially limits the enforcement of immigration laws." § 752.053(a)(1). These allegations are not based on the December 23, 2017 incident, but rather centers on SAPD "policies" that allegedly violate SB4. Defendants deny these allegations in their entirety.

A. SAPD General Manual Procedure 618.11 Does Not Violate Section 752.053(a)

29. Plaintiff's first set of allegations in the third cause of action relate to the SAPD General Manual. Plaintiff alleges that Section 618.11 of the SAPD General Manual is a "de facto policy of prohibiting or materially limiting SAPD officers from *complying with federal immigration laws*." First Am. Pet. at ¶ 99 (emphasis added). This allegation evidences Plaintiff's misinterpretation of SB4 and pertinent federal law. Neither SB4 nor pertinent federal law requires SAPD (or any other local entity) to take any affirmative action to "comply" with federal immigration laws. In contrast, Congress has made clear that federal immigration officials—not local law enforcement entities—are charged with complying with and enforcing federal immigration laws. SB4 simply prohibits local entities like SAPD from standing in the way of federal immigration officials.

30. Nothing in Procedure 618 prohibits or materially limits the enforcement of immigration laws by federal immigration officers. Each day, federal immigration authorities visit the SAPD Central Magistrate Office, which processes arrests in Bexar County. The federal immigration authorities are permitted to enter the facility and visit any individual in custody. SAPD honors all federal deportation warrants and detainer requests from federal immigration authorities.

B. The Relationship with Catholic Charities Does Not Violate SB4

31. Plaintiff's third cause of action also alleges that Defendants' policy of contacting Catholic Charities when they encounter human trafficking or human smuggling prohibits or materially limits the enforcement of immigration laws. *See* Orig. Pet. at ¶ 100. Plaintiff alleges that Defendants are prohibiting or materially limiting enforcement of immigration laws by contacting this social service agency. However, as discussed above, the Communications Protocol developed by SAPD and HSI provides that Catholic Charities and RAICES can provide necessary translation services, aid, and comfort to undocumented persons who are potential witnesses to human smuggling or human trafficking. Plaintiff offers no basis for his allegation that provision of humanitarian services to undocumented witnesses violates state law. Indeed, there is no plausible basis for Plaintiff's claims in this regard.

32. Plaintiff also alleges that Defendants are violating SB4 by facilitating access to legal advice. He alleges that Defendants have a "policy" of "contacting immigration counsel to represent suspected aliens" at the scene of human smuggling or trafficking incidence. First Am. Pet. at ¶ 100. Plaintiff further alleges that the Communications Protocol requires Chief McManus to contact Catholic Charities "and the immigration law firm" of any smuggling or trafficking incident, "so that these agencies can provide . . . legal services to suspected felons (suspected illegal aliens)." *Id.* at ¶ 88. This allegation alone demonstrates this lawsuit is not founded on legal principles, but rather on a political agenda.

33. The Communications Protocol is limited to dealing with undocumented persons who are witnesses to crime (not criminals themselves), and it contains no provision for legal services at all. Plaintiff's allegation is not only false; it is spun out of thin air for the sole purpose of pursuing a political agenda.

C. Defendants Have Not Ignored Human Smuggling Incidents

34. In the final argument in support of his third cause of action, Plaintiff alleges that Defendants have demonstrated a “pattern and practice” of ignoring potential human-smuggling incidents. First Am. Pet. at ¶ 101. Plaintiff offers no support for this baseless allegation, and Defendants deny this allegation in its entirety. Defendants take human smuggling very seriously, and SAPD thoroughly investigates each and every incident of human smuggling that comes to SAPD’s attention. Indeed, as explained in paragraph 16 above, SAPD referred the individual responsible for the December 23, 2017 incident—i.e., the driver—for criminal charges.

IV. PLAINTIFF’S REQUESTS FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES ARE UNSUPPORTABLE

A. Injunctive Relief is Not Appropriate because Defendants Do Not Violate SB4

35. Plaintiff seeks to enjoin Chief McManus and City Manager Walsh from future violations of SB4 and from enforcing Procedure 618.11. Plaintiff titles this section of the Petition “Injunctive Relief,” despite the fact he references § 752.055(b) of SB4, which provides only for “appropriate equitable relief”—and only if a local entity violates SB4. Chief McManus and City Manager Walsh have not violated SB4, so equitable relief is not appropriate. But even if § 752.055(b) did apply, Plaintiff’s request for injunctive relief would be inappropriate.

36. To obtain injunctive relief, a party must demonstrate: (1) a wrongful act; (2) imminent harm; (3) irreparable injury; and (4) no adequate remedy at law. *Long Canyon Phase II & III Homeowners Ass’n, Inc. v. Cashion*, 517 S.W.3d 212, 224 (Tex. App.—Austin 2017, no pet.). In this case, the Texas Legislature has provided for specific civil penalties for violations of SB4; thus, Plaintiff is unable to demonstrate that an adequate remedy at law is not available. Additionally, Plaintiff does not plead any facts to support its allegations of unspecified “future

violations,” and Plaintiff’s request to enjoin “future violations” does not satisfy the other legal requirements for injunctive relief.

B. Civil Penalties are Inappropriate

37. Plaintiff’s Petition ignores that civil penalties are appropriate only when local entities are found to have “*intentionally violated*” § 752.053. Tex. Gov’t Code § 752.056 (emphasis added). Not only have Defendants not violated SB4, Plaintiff has not alleged that Defendants intentionally violated any portion of SB4. Thus, civil penalties are not warranted.

V. GENERAL DENIAL

38. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendants generally deny each and every, all and singular, the allegations in Plaintiff’s Petition and demand strict proof thereof. Defendants reserve the right to plead further as the case progresses and intend to supplement or amend this answer as new information is discovered or otherwise becomes available.

VI. AFFIRMATIVE DEFENSES AND OTHER DEFENSES

39. In addition to the multiple defenses raised above, Defendants further offer the following defenses to Plaintiff’s Petition:

40. As alleged and applied by Plaintiff, Texas Government Code § 752.053(a)(1) and § 752.053(b)(3) are invalid and unenforceable under the Fourth Amendment of the United States Constitution and/or the laws and constitution of the State of Texas.

41. As alleged and applied by Plaintiff, Texas Government Code § 752.053(a)(1) and § 752.053(b)(3) are impermissibly vague and therefore unlawful and unenforceable under the Fourteenth Amendment of the United States Constitution and/or the laws and constitution of the State of Texas.

42. Plaintiff has not alleged any conduct constituting a violation of SB4, Texas Government Code §§ 752.051–.057. The applicable provisions of SB4 require a predicate request for federal assistance. Plaintiff does not allege a sufficient predicate request for federal assistance was made. Plaintiff also has not alleged any conduct warranting imposition of civil penalties or any other civil remedies under Texas law, including the common law and the aforementioned statutory provisions upon which Plaintiff relies in his Petition.

43. As alleged and applied by Plaintiff, Texas Government Code § 752.053(a)(1) and §752.053(b)(3) are invalid and unenforceable under the Supremacy Clause of the United States Constitution.

44. As alleged and applied by Plaintiff, Texas Government Code § 752.053(a)(1) and §752.053(b)(3) are invalid and unenforceable under the First Amendment of the United States Constitution and/or the laws and constitution of the State of Texas.

45. Defendants are immune, in whole or in part, from liability under those provisions of SB4 that were subject to federal injunction between September 1, 2017 and March 13, 2018, pursuant to the Fourteenth Amendment of the United States Constitution and/or the laws and constitution of the State of Texas.

46. Chief McManus and City Manager Walsh are improper defendants to this action because Plaintiff's requests for injunctive relief are legally improper and groundless.

VII. REQUESTS FOR DISCLOSURE

47. In their Original Answer, Defendants included a request for Plaintiff to disclose the information and material described in Rule 194.2 of the Texas Rules of Civil Procedure. Plaintiff complied with that request. Defendants retain the request here solely for the avoidance

of any doubt that Plaintiff is required to amend and/or supplement his responses to the request in accordance with the applicable Texas Rules of Civil Procedure and all associated case law.

VIII. CONCLUSION

48. Plaintiff's allegations ignore the law: SAPD cannot detain a person simply because that person is undocumented. Plaintiff's allegations ignore the facts: SAPD contacted the Department of Homeland Security as soon as it learned of the December 23, 2017 incident, and HSI or ICE made the decision not to take the 12 witnesses into custody.

49. Regrettably, the Attorney General does not let the law or facts get in the way of making a political statement through this lawsuit.

IX. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants pray that the Court deny all relief requested by Plaintiff and grant Defendants such other and further relief, both at law and in equity, to which they may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on May 28, 2019, a true and correct copy of the foregoing document was served electronically and via email on Plaintiff's counsel of record, as indicated below.

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